SUPREME COURT OF KENTUCKY

2002-SC-0716-D
2000-CA-0056

CHARLES K. MONIN, JR.
and DONALD MONIN MOVANTS

V. NELSON CIRCUIT COURT
NO. 1994-CI-0056

MONIN, INC., ET AL RESPONDENTS

ORDER DENYING
DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.
All concur.
ENTERED December 11, 2003.

s/ Charles Lambert
Chief Justice

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS
No. 2000-CA-001067-MR

CHARLES K. MONIN,
ET AL. APPELLANTS

v. APPEAL FROM NELSON
CIRCUIT COURT
ACTION NO. 94-CI-00056

PAUL B. MONIN,
ET AL. APPELLEES

** ** ** ** **

ORDER

BEFORE: BUCKINGHAM, KNOPF, and McANULTY, Judges.

This Court has considered appellant's motion to reconsider the opinion and order entered June 14, 2002, and appellant's motion to file a reply to appelle's response to appellant's motion to reconsider. Appelle has filed a response in opposition to appellant's motion to reconsider. No response to appellant's motion to file a reply was filed.

Having considered the motions, the Court ORDERS the motions be, and they are hereby, DENIED.

s/William McAnulty
JUDGE, COURT OF APPEALS
ENTERED: AUGUST 5, 2002

RENDERED: JUNE 14, 2002;
2:00 p.m.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 2000-CA-001067-MR

CHARLES K. MONIN JR.
ET AL. APPELLANTS

vs. APPEAL FROM NELSON
CIRCUIT COURT
HONORABLE LARRY RAIKES,
JUDGE
ACTION NO. 94-CI-00056

PAUL B. MONIN,
ET AL. APPELLES

OPINION AND ORDER
(1) AFFIRMING
(2) GRANTING MOTION TO
DISMISS ONE APPELLANT
(3) DENYING MOTION TO
DISMISS APPEAL
(4) DENYING MOTION TO
DISMISS APPELLEE.
** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF,
AND McANULTY, JUDGES.

McANULTY, JUDGE: In this appeal, appellants, Charles K. Monin, Jr. and Donald Monin, challenge the April 6, 2000 judgment of the Nelson Circuit Court which declaired void the Settlement Agreement they entered into with the appellees, Paul B. Monin, Joseph E. Monin, Raphael Monin, William Monin, James A. Monin, Linda Roby, Martha Wheeler, and Carolyn Backherms. Appellants also appeal the April 13, 2000 order of the Nelson Circuit Court which denied appellant's motion to alter or amend the judgment entered on the supersedeas bond. We affirm.

As as initial matter, some of the appelles filed a motion to dismiss Monin, Inc., as an appellant. Monin, Inc. is currently in dissolution proceedings by order of the Nelson Circuit Court as a result of prior litigation between these parties. A receive, Roger Leggett, has been appointed for Monin, Inc. Appellants are two stockholders who have contested the dissolution of the corporation. The court below held that since the corporation has been dissolved, appellants have no standing to prosecute any matter in the name of Monin, Inc. We conclude that appellants were not authorized to bring the instant appeal in the name of the corporation. Therefore, we dismiss Monin, Inc. as an appellant in this case.

Both appellants and appellees contend, however, that the corporation is a necessary party to the appeal as a party to the Settlement Agreement. In the court below, the corporation was designed a third-party defendant in the proceedings leading to this appeal. We agree that the corporation is a necessary party to this appeal. However, we do not agree with appellees that dismissal of the appeal is required because Monin, Inc. was not named as an appellee. We conclude that Monin, Inc. may be designated as a appellee since appellants gave sufficient notice that it was a party to the appeal. Blackburn v. Blackburn, Ky., 810 S. W. 2d 55 (1991)

Wherefore, we grant the motion to dismiss Monin, Inc. as an appellee because this Court has found the corporation to be an indispensable party to the appeal.

Next, appellees, Isaac Commerical Properties and Wal-Mart Real Estate Business Trust, named as Purchaser/ Assignee in this case, moved this Court to dismiss them from this appeal. On February 8, 2001, Wal-Mart Real Estate Business Trust, assignee of Isaac Commercial Properties, terminated its contract with Roger Leggett, Receiver for Monin, Inc. They assert that they no longer have an interest in the subject matter of this litigation. Appellants assert that termination of the contract does not terminate these appellees' interest in the property at issue, and that at any time after dismissal these appellees could enter into another contract to purchase the property. We deny the motion to dismiss Isaac Commercial Properties and Wal-Mart Real Estate Business Trust from this appeal.

As for the merits of the present appeal, appellants argue that the circuit court action dissolving the corporation violated the federal and state constitutional prohibitions against legislation impairing contracts, and denied them due process of law because the Settlement Agreement could no longer be carried out. Appellees assert that appellants raised these claims in the appeal of the court's order of August 15, 1997, which ordered the dissolution of Monin, Inc. From the limited record before us, this appears correct. Further, we conclude that this argument was not preserved by being raised in the court below when appellants filed a petition for declaratory rights. The trial court correctly denied the petition for declaration of rights under the Settlement Agreement due to the fact that the agreement is now null and void.

* * * * * * * * * * * * * * *

For the forgoing reasons, we affirm the orders of the Nelson Circuit Court.

IT IS HEREBY ORDERED (1) that appellees' Motion to Dismiss Monin, Inc. as a appellees' be and the same is hereby GRANTED; (2) appellees' motion to dismiss the appeal is hereby DENIED and Monin, Inc. shall be designated as an appellee; and (3) the motion of appellees, Isaac Commercial Properties and Wal-Mart Real Estate

Business Trust, to be dismissed from this appeal is hereby DENIED.

ENTERED: June 14, 2002

s/William McAnulty
Judge

ALL CONCUR.

BRIEF FOR APPELLANTS:

Marshall V. Gaither
Pewee Valley, Kentucky

BRIEF FOR APPELLEE:

John S. Kelley, Jr.
Kelley & Hite, PLLC
Bardstown, Kentucky

NELSON CIRCUIT COURT

NO. 94-CI-00056

CHARLES KELM
MONIN, JR., ET AT PLAINTIFFS

VS.

PAUL MONIN, ET AL DEFENDANTS
THIRD PARTY PLAINTIFFS

VS.

MONIN, INC.
THIRD PARTY DEFENDANTS

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

****

On November 22, 1996, plaintiff, Charles Kelm Monin, Jr. ("Charles"), and third-party defendant, Monin, Inc., filed a petition for declaration of rights, subsequently amended on October 24, 1997, wherein they sought, inter alia, to have the respective rights of all parties to the February 3, 1991 settlement agreement defined.

Rulings on those declarations of rights issues were abated pending finalization of other issues pending at that time. Subsequently, on January 31, 2000, an opinion of the Kentucky Court of Appeals became final under which dissolution of Monon, Inc. and the appointment of a Receiver were upheld. Reference is made to that opinion, No. 1997-CA-002871-MR, since it constitutes the law of the case, effectively rendering moot the declaration of rights issues.

Charles has now moved to set his declaration of rights claim for hearing and to stay all proceedings by the Receiver pending a ruling thereon.

First, since Monin, Inc. has not been dissolved, Charles has no standing to prosecute any matter in the name of Monin, Inc. Second, since Charles' request for declaration of rights is predicated upon the February 3, 1991 settlement agreement, the Court must determine if that agreement now has any validity.

A perusal of the February 3, 1991 agreement will quickly reflect that the Monin, Inc. stock was the core around which the agreement was woven. When Monin, Inc. no longer existed, the primary source of consideration for the February 3, 1991 agreement ceased to exist rendering the agreement null and void.

For these reasons, Charles' petition and amended petitions for declaration or rights shall be dismissed.

NOW, THEREFORE, THE PREMISES CONSIDERED, IT IS ORDERED AND ADJUDGE AS FOLLOWS:

1. The agreement of February 3, 1991, be and it is hereby declared null and void of no further force and effect.

2. That the petition and amended petition of plaintiff, Charles Kelm Monin, Jr. for declaration of rights, filed herein on November 22, 1996 and October 24, 1997, be and they are hereby dismissed, with prejudice.

3. That the aforementioned petitions as they relate to third-party defendant, Monin, Inc., be and they are hereby dismissed, due to lack of standing by Charles Kelm Monin, Jr., to prosecute them.

4. That the motion of plaintiff, Charles K. Monin, Jr., to stay further proceedings by the Receiver pending a hearing upon his declaration of rights petitions be and it is hereby denied as moot.

This is a final and appealable judgement and there is no just reason for delay.

DATED 4/5/00

s/Larry Raikes
JUDGE, NELSON CIRCUIT COURT

DISTRIBUTION LIST:

_____ Marshall Gaither

_____ John S. Kelley

_____ Roger Leggett

_____ Don Monin

Entered:
Apr 06 2000

Clerk _____

Date: _____